Admiralty

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The cases discussed herein represent decisions from the United States Court of Appeals for the Eleventh Circuit, as well as district courts within the Circuit, issued in 2024. While not an all-inclusive list of maritime decisions during that timeframe, the Author identified and provided summaries of key rulings of interest to the maritime practitioner.[1]

I. SEAFARER'S EMPLOYMENT CONTRACTS AND CLAIMS

There were a couple of decisions involving seamen's employment contracts issued during the past year. The first comes from the United States Court of Appeals for the Eleventh Circuit, and involves attempted enforcement of a forum selection clause by non-signatories to the employment contract.[2] The plaintiffs were crewmembers aboard the *M/V Greg Mortimer*, a cruise ship scheduled to sail from Argentina to the Antarctic, in March 2020.[3] Unfortunately, this coincided with the inception of the worldwide COVID-19 pandemic. Despite awareness of the risk, the vessel's management companies elected to proceed with the voyage. Many of the crewmembers became ill. Seven filed suit in the United States District Court for the Southern District of Florida asserting negligence claims under the Jones Act,[4] as well as claims for

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1. For an analysis of admiralty law during the prior survey period, *see* John P. Kavanagh, Jr., *Admiralty*, *Eleventh Circuit Survey*, 75 MERCER L. REV. 1103 (2024), https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=3353&context=jour_mlr [https://perma.cc/7QYY-9QXE].

2. Usme v. CMI Leisure Mgmt., Inc., 106 F.4th 1079, 1083 (11th Cir. 2024).

3. *Id.*

4. 46 U.S.C. § 30104 (2022).

maintenance and cure under the general maritime law.[5] Defendants moved to dismiss, relying on a forum selection clause in the employment contracts signed by the crewmembers.[6] The district court granted the motion to dismiss based on *forum non conveniens*, after first determining there was an enforceable contract and valid forum selection clause warranting such action.[7]

"[T]he defendants sued by the crewmembers—CMI Leisure Management, Inc., Cruise Management International, Inc., and Vikand [Medical Solutions, LLC]—were not parties to the employment agreements."[8] These entities signed the same only in their capacity as agents of the identified owner.[9] The trial court reasoned that the nonparties to the employment agreements—defendants herein—"were entitled to enforce [the forum selection] clause under the doctrine of equitable estoppel."[10] The court then used a *forum non conveniens* balancing test to determine that dismissal was appropriate.[11]

The appellate court was critical of the district court's use of *forum non conveniens* analysis in the first instance.[12] Seemingly, when a contract contains a valid forum selection clause, this should end the inquiry. The Eleventh Circuit followed this vein of reasoning, noting that, "the Supreme Court has said that the existence of a valid and enforceable forum-selection clause is essentially dispositive in the *forum non conveniens* analysis."[13]

Defendants' equitable estoppel argument suggested that the plaintiffs were (essentially) trying to have their cake and eat it too; *i.e.*, seeking Jones Act and general maritime remedies as seamen—as evidenced by the employment contracts—while disavowing the contractual forum selection clause.[14] The Eleventh Circuit rejected this "but-for" rationale: "Rather, the signatory 'must actually depend on the underlying contract

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5. *Usme*, 106 F.4th at 1083–84.

6. *Id.* at 1084. The employment agreements required that all disputes arising from the seamen's employment be brought in the Bahamas, and that Bahamian law would apply. *Id.*

7. *Id.* at 1084–85.

8. *Id.* at 1084.

9. *Id.* The opinion does not make clear that exact role of the named defendants (CMI Leisure Management, Inc., Cruise Management International, Inc., and Vikand Medical Solutions, LLC).

10. *Id.* at 1085.

11. *Id.*

12. *Id.* at 1085 n.4.

13. *Id.* at 1086 (citing Atl. Marine Constr. Co. v. U.S. Dist. Ct., 571 U.S. 49, 62–64 (2013)).

14. *Usme*, 103 F.4th at 1087.

to make out his or her claim against the nonsignatory.'"[15] Here, the crewmembers relied on the statutory provisions of the Jones Act, as well as general maritime law precepts, for their claims against defendants.[16]

In reversing and remanding the district court's decision, the Eleventh Circuit emphasized that, "[o]ur ruling is narrow. We do not decide whether the forum-selection clause is unenforceable by the defendants on a theory other than equitable estoppel. Nor do we opine on any of the other issues asserted by the crewmembers."[17] The holding discreetly focused on the error in dismissing the case on *forum non conveniens* grounds based on "an incorrect belief that equitable estoppel permitted the non-signatory defendant to invoke and enforce the forum-selection clause in the crewmembers' employment agreements."[18]

The decision in *Van der Merwe v. Vanter Cruise Global, Inc.*,[19] is another example of non-signatories attempting to enforce an arbitration clause within a seaman's employment contract.[20] The plaintiff was actually the legal guardian of his wife (Mrs. Ellis Carneiro Pereira), who was rendered disabled as a result of alleged inadequate medical treatment provided by defendant Vanter Cruise Global, Inc. (Vanter).[21] Mrs. Pereira was working as a bartender aboard a cruise ship operated by Crystal Cruises, Ltd., her employer.[22] Crystal Cruises signed a contract with Vanter to operate the medical clinic on the vessel. The plaintiff sued Vanter—but not Mrs. Periera's employer—alleging that Vanter failed to provide proper care when the seaman fell ill on the vessel. Suit was filed in the Miami-Dade County Circuit Court, alleging Jones Act negligence, breach of contract under Florida law, and loss of consortium. Defendant Vanter removed the case and sought dismissal, or in the alternative, to compel arbitration.[23]

The court addressed whether or not a Jones Act case could be removed in the first instance.[24] Historically, claims under the Jones Act are not removable to federal court absent a separate, independent basis for subject matter jurisdiction.[25] Here, defendant argued that, based on the

15. *Id.* at 1088 (quoting Bah. Sales Assoc., LLC v. Byers, 701 F.3d 1335, 1343 (11th Cir. 2012)).

16. *Usme*, 106 F.4th at 1089.

17. *Id.* at 1091.

18. *Id.*

19. 752 F.Supp.3d 1312 (S.D. Fla. 2024).

20. *Id.* at 1318.

21. *Id.* at 1316 n.1.

22. *Id.* at 1316.

23. *Id.*

24. *Id.* at 1317.

25. *Id.*

United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards,[26] removal was proper.[27] Referencing prior Eleventh Circuit jurisprudence, the district court noted that Jones Act claims may be subject to arbitration under the Convention, thus allowing removal in order to compel arbitration.[28]

Mrs. Pereira signed an employment contract with Crystal subject to a Norwegian collective bargaining agreement.[29] This agreement did contain an arbitration provision. Defendant Vanter alleged that it was acting as the agent for the employer when it provided medical services to the crew working aboard the vessel at issue and should be subject to the arbitration provision in the employment agreement.[30]

The plaintiff opposed this argument, seeking remand to state court.[31] First, the plaintiff pointed out that Mrs. Pereira never agreed to arbitrate with defendant Vanter; Vanter was not a party to either the employment contract or the collective bargaining agreement.[32] Moreover, the collective bargaining agreement was restricted to claims "relating to the Seafarer's service for the Company . . . ."[33] The district court relied on Eleventh Circuit precedent interpreting a similar clause which reflected the parties' intent to limit the agreement to service provided to the employer, not a third party. [34] "Here, Pereira's injuries did not 'relate to' her employment as a bar server, and thus fall [far] outside the scope of the [collective bargaining agreement's] arbitration agreement."[35]

II. MARINE INSURANCE

The United States District Court for the Middle District of Florida weighed in on the intersection of admiralty procedure and practice with a litigant's right to a jury trial; the court was also faced with a choice of law question in connection with demand for attorney's fees under Florida

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26. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Dec. 29, 1970, 21 U.S.T. 2517 [hereinafter New York Convention].

27. V*an der Merwe*, 752 F.Supp.3d at 1316 (citing New York Convention, *supra* note 26). *See generally* 9 U.S.C. §§ 201–208 (recognizing the Convention and codifying its application and enforcement federally).

28. *Van der Merwe*, 752 F.Supp.3d at 1317 (citing Pysarenko v. Carnival Corp., 2014 WL 1745048, at *8 (S.D. Fla. Apr. 30, 2014), *aff'd* 581 F. App'x 844 (11th Cir. 2014)).

29. *Id.* at 1318.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* (citing Doe v. Princess Cruise Lines, Ltd., 657 F.3d 1204, 1217 (11th Cir. 2001)).

35. *Id.* at 1319.

law.[36] Accelerant Specialty Insurance Company (Accelerant) issued a liability policy to Z&G Boat and Jet Ski Rentals, Inc. (doing business as "Blind Pass").[37] Blind Pass was in the business of renting recreational vessels, and rented a vessel to Ms. Kristin Birdsey in 2022.[38] Ms. Birdsey was injured in an accident and sued Blind Pass. Blind Pass tendered the complaint to Accelerant, its insurer, requesting defense and indemnity. Instead of providing such service, Accelerant sued Blind Pass in federal court seeking a determination that its policy did not cover the incident.[39] Accelerant cited only admiralty and maritime jurisdiction as the basis for its declaratory judgment suit.[40] Blind Pass responded by filing a counterclaim, also seeking declaratory judgment for coverage, along with claims for breach of contract and attorney's fees under Florida law. Blind Pass asserted diversity jurisdiction as its basis for the federal court's jurisdiction and demanded a jury trial.[41]

Accelerant filed two preliminary motions, the first seeking to dismiss Blind Pass' declaratory judgment claim as redundant, arguing it was identical to the requested relief in the original complaint.[42] The second motion was a motion to strike, seeking to nullify Blind Pass' demand for a jury trial, as well as its claim for attorney's fees under Florida law.[43] Reviewing the motions under the deferential standards employed at the incipient stages of suit, the district court denied the motion to dismiss, but granted the insurance company's motion to strike Blind Pass' jury demand, as well as its claim for attorney's fees under Florida law.[44]

With respect to the motion to dismiss the insured's counterclaim for declaratory relief, the court agreed that it was largely identical to the original declaratory action filed by Accelerant.[45] However, it was unclear to the court whether the claims completely overlapped and noted it could

36. Accelerant Specialty Ins. Co. v. Z&G Boat and Jet Ski Rentals, Inc., 737 F.Supp.3d 1297 (M.D. Fla. June 11, 2024).

37. *Id.* at 1300. The court never explains why Z&G Boat and Jet Ski Rentals, Inc. was referred to by the seemingly unrelated name of "Blind Pass."

38. *Id.*

39. *Id.*

40. *Id.*; *see* 28 U.S.C. § 1333 (1949).

41. *Id.* at 1300, 1302 n.1.

42. *Id.* at 1300.

43. *Id.*

44. *Id.* at 1302–1305 (citing FED. R. CIV. P. 12(b)(6) (motion to dismiss for failure to state a claim) and FED. R. CIV. P. 12(f) (motion to strike)).

45. *Id.* at 1302.

revisit the issue at a later time.[46] Accelerant's motion to dismiss was, therefore, denied.[47]

The court then turned to the motions to strike the jury demand and request for attorney's fees.[48] Of note is the election by Accelerant—the declaratory judgment plaintiff—to proceed under the Supplemental Rules for Admiralty and Maritime Cases.[49] The United States Court of Appeals for the Eleventh Circuit has held where an insurer files a declaratory action on a marine insurance policy, making a "9(h)"[50] election, the insured is not entitled to a jury trial upon filing a counterclaim for breach of contract.[51]

The instant case fits squarely within the precedent of the Eleventh Circuit. First, the counterclaim involved the same issue as the declaratory judgment action (coverage under the insurance policy).[52] Next, there was no other federal statute providing an express right to jury trial.[53] The court referenced the "savings to suitors" clause in 28 U.S.C. § 1333(1),[54] which is read in the context of the Seventh Amendment's[55] right to a jury trial: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."[56] The phrase "common law" was used in contrast to admiralty claims grounded in the court's equitable powers.[57] Taken together, and against the Eleventh Circuit's precedent, the district court had no trouble dispensing of the insured's request for a jury trial, granting a motion to strike the same.[58]

Addressing the attorney's fee request, the court began its analysis by noting the choice of law clause in the insurance contract.[59] New York law would apply to policy disputes, in the absence of any entrenched federal

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46. *Id*.

47. *Id.*

48. *Id*. at 1303–1305.

49. *Id.* at 1303, citing Accelerant's election under FED. R. CIV. P. 9(h); FED. R. SUPP. ADMIRALTY & MARITIME CLAIMS, Rules A—G.

50. FED. R. CIV. P. 9(h).

51. *Id.* at 1303–04 (citing St. Paul Fire and Marine Ins. Co. v. Lago Canyon, Inc., 561 F.3d 1181, 1188 (11th Cir. 2009)).

52. *Id.* at 1304.

53. *Id*.

54. 28 U.S.C. § 1333(1) (1949).

55. U.S. CONST. amend. VII, cl.1.

56. *Id*.

57. *Accelerant Specialty Ins. Co.*, 737 F.Supp.3d at 1303.

58. *Id.* at 1304–05.

59. *Id*. at 1305.

maritime law governing the issue.[60] Referencing a recent Supreme Court of the United States decision on the enforceability of choice of law clauses, the court rejected the arguments against ignoring the contractual provision.[61] The court granted the motion to strike the demand for attorney's fees which was based on Florida statutory law.[62]

Eleventh Circuit precedent holds that the doctrine of *uberrimae fidei* is controlling law within the circuit.[63] In the referenced case, a marine insurer (Clear Spring Property and Casualty Co.) filed a declaratory action against its insured (Dream On Yacht, LLC) requesting a determination that the policy was void *ab initio* pursuant to the doctrine of *uberrimae fidei*.[64] "*Uberrimae fidei*, meaning 'utmost good faith,' is a maritime doctrine which 'requires that insured fully and voluntarily disclose to the insurer all facts material to a calculation of the insurance risk.'"[65] The insured is required to disclose all material facts to the risk, including those not directly asked about by the insurer.[66] In the instant case, an insurance application was completed by the sole member of the vessel-owning LLC. Two questions and their answers in the application were referenced by the insurance company: (1) Whether or not the operator had been involved in a loss in the last ten years, and (2) whether or not the operator had been convicted of a criminal offense. The insured answered both questions in the negative, when both should have been answered "yes."[67]

The vessel suffered a loss shortly after the insurance policy was issued.[68] The insurance company conducted an investigation, determined the foregoing questions were not answered truthfully, and declined coverage.[69] A declaratory judgment action was filed, and one of the counts requested that the policy be voided *ab initio* based on the failure to disclose material facts in the insurance application.[70] The court discussed the application of the *uberrimae fidei* within the Eleventh Circuit, noting

60. *Id.*

61. *Id.* (citing Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC, 601 U.S. 65 (2024)).

62. *Id.* at 1308 (citing Fla. Stat. § 627.428(1)).

63. Clear Spring Prop. and Cas. Co. v. Dream On Yacht, LLC, 2024 WL 5372392, *5 (S.D. Fla. Sept. 13, 2024) (internal citations omitted).

64. *Id.* at *4.

65. *Id.* at *5 (quoting, *inter alia*, HIH Marine Servs., Inc. v. Fraser, 211 F.3d 1359, 1362 (11th Cir. 2000)).

66. *Id.* (internal citations omitted).

67. *Id.* at *2.

68. *Id.* at *2–3.

69. *Id.* at *3.

70. *Id.* at *3–4.

that a material representation will void the policy even if it is a result of a mistake, accident, or forgetfulness.[71] A misrepresentation is material if it bears on the risks to be covered by the insurance policy.[72]

The insurance company submitted an affidavit from an underwriter, which attested that accepting coverage and setting premiums certainly involve consideration of loss history.[73] Additional evidence was presented from the underwriting manual that the insurer must consider past losses for both the owner and vessel. Finally, there was evidence that the premium would be higher if the prior loss had been disclosed.[74]

The insured presented no evidence to rebut the insurance company's position.[75] Instead, the insured suggested that the underwriter's declaration was nothing more than "self-serving" testimony, and discounted its value in carrying the burden on summary judgment.[76] The court flatly rejected this position: "To begin with, 'there's nothing wrong with a party relying, at summary judgment, on self-serving statements.'"[77] The insured also suggested that the application form was completed by the member individually, not the insured corporate entity.[78] Accordingly, the error should not be held against the corporate vessel owner.[79] The court easily disposed of this argument, noting that the doctrine of *uberrimae fidei* requires disclosure of all facts material to the risk, even those not directly inquired into by the insurer.[80] Further, the relevant loss history embraces the vessel involved, not just the insured and the individual completing the document.[81]

Interestingly, the court did not address whether the failure to disclose a prior criminal conviction of the operator constituted a material

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71. *Id.* at *6 (citing *HIH Marine Servs., Inc.*, 211 F.3d at 1363).

72. *Id.* (citing *HIH Marine Servs., Inc.*, 211 F.3d at 1363).

73. *Id.* at *6–7.

74. *Id.* at *6–8.

75. *Id.* at *7.

76. *Id.*

77. *Id.* (quoting Inskeep v. Baccus Glob., LLC, 2024 WL 416357, at *6 (S.D. Fla. Feb. 5, 2024)).

78. *Id.* at *9.

79. *Id.*

80. *Id.*

81. *Id.* There was a final argument advanced in opposition to summary judgment, relying on the role of the broker who placed coverage. *Id.* at *9–10. The individual member of the LLC (insured) argued he did tell the broker about the prior loss but was instructed not to include the same on the application. *Id.* (internal citations omitted). The policy called for the application of New York law, which views an insurance broker as the agent of the applicant or insured, not the insurer. *Id.* at 10.

misrepresentation.[82] Having determined that the failure to disclose the prior loss history was sufficient, the court granted the summary judgment motion, finding the policy was effectively void at its inception (*ab initio*).[83]

The decision in *Great Lakes Insurance SE v. Sea 21-21, LLC*[84] also involved the application of *uberrimae fidei* and the ultimate decision to void a marine insurance policy *ab initio*.[85] Following loss of the insured vessel, an investigation revealed that the insured misrepresented the actual purchase price, and failed to provide correct information and supporting materials regarding cost of improvements made to the vessel.[86] The court's inquiry focused on whether or not the omitted facts were material to the risk, such that *uberrimae fidei* would warrant voidance of the entire policy.[87]

Allegations concerning misrepresentation of the purchase price were based on the amount stated in the bill of sale versus what was actually paid.[88] Apparently, the purchaser obtained a credit for monies spent to repair the engine, and this was not reflected on the invoice or bill of sale.[89] The court did not find this was a material representation sufficient to void the policy.[90]

The court determined, however, that the insured misrepresented the amount of improvements made to the vessel, which was the basis for an increase in coverage during the term of the policy.[91] The doctrine of *uberrimae fidei* requires disclosure of all material facts, regardless of request by the insured.[92] Here, the underwriter made specific request for documentation to support the increased valuation (i.e., value of improvements made to the vessel warranting an increase in coverage).[93] Following several exchanges, the insured told the underwriters that the documents were in storage and not easily accessible. Shortly thereafter, the vessel was lost in a fire while at sea, prompting the insured to make a claim based on the increased valuation. During discovery, no evidence was presented supporting the increased valuation based on

82. *Id.* at *13.
83. *Id.* at *13–14.
84. 2024 WL 5374786 (S.D. Fla. Nov. 12, 2024).
85. *Id.* at *1.
86. *Id.* at *2–6.
87. *Id.* at *7–8.
88. *Id.* at *8.
89. *Id.* at *9.
90. *Id.* at *10.
91. *Id.* at *14.
92. *Id.* at *11.
93. *Id.* at *11–12.

improvements to the vessel.[94] Moreover, the court pointed out that, on the night before the trial, the insured "found" a box of invoices and receipts to support the improvements to the vessel.[95] The court found this explanation suspect, and observed that the insured knew this information was important to the underwriter, based on the underwriter's prior request for the same.[96]

The court concluded that Sea 21-21 misrepresented the value of improvements made to the vessel, as well as its ability to provide documentation to support an increase in insurance coverage.[97] These misrepresentations were material, and the court declared the policy to be void *ab initio*.[98]

Choice of law and a "reverse" *uberrimae fidei* claim were featured in another 2024 decision involving marine insurance.[99] The plaintiff vessel owner alleged that the insurance company breached the policy by failing to declare the vessel a constructive total loss following a fire.[100] At issue, however, were Counts II through IV, which averred as follows: Count II—Negligent failure to reasonably adjust the loss; Count III—Breach of the duty of good faith and fair dealing; and Count IV—Bad faith pursuant to Florida statutory law.[101] The defendant insurance company filed a motion to dismiss Counts II, III, and IV.[102]

The insurance contract called for the application of New York law in the absence of controlling federal admiralty law.[103] New York law does not allow a separate negligence action for claims stemming from breach of contract.[104] As such, defendant argued that Count II (negligent failure to adjust the loss) failed to state a claim under New York law.[105] As explained by the court, "Plaintiff's Amended Complaint studiously avoids alleging *why* Defendant owed Plaintiff a duty to reasonably adjust his claim. However, that duty plainly flows from Defendant's obligations under the Policy."[106] Because New York law precludes a negligence claim

94. *Id.* at *12.
95. *Id.* at *14.
96. *Id.*
97. *Id.* at *17.
98. *Id.*
99. Liermo v. Nat'l Cas. Co., 733 F.Supp.3d 1359 (S.D. Fla. May 9, 2024).
100. *Id.* at 1362.
101. *Id.*
102. *Id.* (citing FED. R. CIV. P. 12(b)(6)).
103. *Id.* at 1363.
104. *Id.* at 1366–67 (citing Polar Vortex, LLC v. Certain Underwriters at Lloyds, London, 2023 WL 2016832, at * 6 (S.D. Fla. Feb. 14, 2023)).
105. *Id.* at 1367.
106. *Id.* at 1368.

that is premised on the breach of a contractual duty, the court dismissed Count II.[107] The same analysis was used to dismiss Count IV, alleging that the insurance company acted in bad faith.[108]

Turning to the remaining claim—breach of duty of good faith in fair dealing in Count III—the court cited the established law of the Eleventh Circuit, applying the doctrine of *uberrimae fidei* (duty of utmost good faith).[109] This case was the reverse of what one usually sees; typically, the insurance company relies on the doctrine of *uberrimae fidei* to void the policy *ab initio* where an insured fails to disclose facts material to the risk. The duty is reciprocal, however, and suffices to support a claim of breach of good faith and fair dealing from the insured's standpoint against an insurance company.[110] The district court allowed this claim of the insured to proceed.[111]

III. SHIPOWNER'S LIMITATION OF LIABILITY

Admiralty and maritime law includes a host of special rights, including the Shipowner's Limitation of Liability Act.[112] The Limitation of Liability Act allows a vessel owner to limit its liability for damage or injury that occurs, without the owner's privity or knowledge, to the value of the vessel or the owner's interest in the vessel following a maritime casualty.[113]

Following the devastating fire aboard the dive boat *Conception*, Congress added reforms to the Limitation of Liability Act of 1851.[114] Beginning in December 2022, the owners of "covered small passenger vessels" are no longer entitled to the protections of the Limitation Act.[115] These restrictions have not yet been fully fleshed out, and there is a paucity of case law on the topic.

The United States District Court for the Middle District of Florida addressed the issue on two occasions, both arising from the same

107. *Id.*

108. *Id.* at 1369–70 (internal citations omitted).

109. *Id.* at 1368–69.

110. *Id.* at 1369.

111. *Id.* at 1369 n.4.

112. 46 U.S.C. §§ 30501–30530.

113. 46 U.S.C. § 30529 (2006).

114. *See* Arthur A. Crais, Jr., *Recent Developments in the Shipowner's Limitation of Liability Act*, 21 LOY. MAR. L. J. 1, 2 (2022) ("The proposed legislation was introduced specifically in response to the tragic fire aboard the Dive Boat CONCEPTION on September 2, 2019, which resulted in the loss of 34 lives.").

115. *Id.* at 3.

maritime casualty.[116] The changes to the Limitation of Liability Act, restricting its use for "covered small passenger vessels" was discussed in the decision *In re Petition of John*,[117] albeit in a cursory fashion.[118] The Magistrate Judge's Report and Recommendation summarized the recent changes and restrictions on "covered small passenger vessels:"

> The Limitation of Liability Act applies to "seagoing vessels and vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters." 46 U.S.C. § 30502(a). But, beginning on December 23, 2022, the Limitation of Liability Act no longer applied to "covered small passenger vessels." *Id.* § 30502(b). The Act defines a "small passenger vessel" as "a vessel of less than 100 gross tons . . . (A) carrying more than 6 passengers, including at least one passenger for hire; (B) that is chartered with the crew provided or specified by the owner or the owner's representative and carrying more than 6 passengers; (C) that is chartered with no crew provided or specified by the owner or the owner's representative and carrying more than 12 passengers; (D) that is a submersible vessel carrying at least one passenger for hire; or (E) that is a ferry carrying more than 6 passengers." *Id.* § 2101(47). The Act defines a "covered small passenger vessel" as a "small passenger vessel" that is not a wing-in-ground craft and that is carrying "not more than 49 passengers on an overnight domestic voyage; and [ ] not more than 150 passengers on any voyage that is not an overnight domestic voyage." *Id.* § 30501(1).[119]

The magistrate judge noted that the Limitation Petitioner alleged "nothing concerning the weight of the boat, whether it is a wing-in-ground craft, and the number of passengers on the boat."[120] While noting this reason alone was sufficient to recommend dismissal, the magistrate judge went on to discuss other factors also weighing in favor of dismissal; e.g., failure to demonstrate that the limitation petitioners qualified as "owners" sufficient to invoke the Act's

116. *See* In re Petition of John, 2024 WL 5328056 (M.D. Fla. Dec. 9, 2024); In re Petition of Freedom Marine Sales, LLC, 2024 WL 2874817 (N.D. Fla. May 7, 2024).

117. 2024 WL 5328056 (M.D. Fla. Dec. 9, 2024).

118. *Id* at *2. The referenced decision is a report and recommendation from the magistrate judge. Upon last check, there has been no further activity (i.e., no indication that the report and recommendation has been adopted).

119. *Id.* at *2 (internal citations omitted).

120. *Id.*

protections, and failure to include the required Supplemental Rule F[121] necessary information.[122]

The Limitation Act has historically been extended to recreational craft following a maritime casualty.[123] The 2023 amendments were arguably directed to commercial vessels, carrying passengers for hire. At least one district court has come to this conclusion.[124] In that case, a collision occurred between a small aluminum skiff and a slightly larger workboat. Both vessels were owned by the same entity, and "[n]either carried more than the boat's operator."[125] The district court rejected the restrictive limits on small craft, allowing the vessels' owner to proceed with its limitation petition:

> [T]he vessels still do not qualify under the definition, because it requires the vessel to be carrying a passenger for hire. A passenger for hire is "a passenger for whom consideration is contributed as a condition of carriage on the vessel." Pierre was not a passenger of his own vessel, as he was the master of the vessel, and the same is the case for Hall. Further, "the boats were never used to transport 'passengers for hire.'" . . . Therefore, the exclusion does not cover the boats in this matter.[126]

IV. RIGHT TO JURY TRIAL

In the decision *In the Matter of the Complaint of Payne*,[127] the court discussed the right to a jury trial in a limitation of liability action.[128] Jason Payne filed a limitation action following a fire aboard his vessel.[129] A claimant filed an answer and demanded a jury trial. Mr. Payne—the limitation petitioner—moved to strike the demand as improper, arguing the case was cognizable only under the court's admiralty and maritime jurisdiction.[130] The claimant responded that the "Savings to Suitors"

121. *Id.* at *2–6 (citing FED. R. SUPP. ADMIRALTY & MARITIME CLAIMS).

122. *Id.*

123. *See, e.g.*, Keys Jet Ski, Inc. v. Kays, 893 F.2d 1225, 1226 (11th Cir. 1990) (holding the Limitation of Liability Act applies to personal watercraft).

124. In the Matter of Tex. Petroleum Inv. Co., 2024 WL 4107680 (E.D. La. Sept. 6, 2024).

125. *Id.* at *3.

126. *Id.* at *2 (internal citations omitted).

127. 2024 WL 982524 (N.D. Fla. Feb. 7, 2024).

128. *Id.* at *1.

129. *Id.*

130. *Id.*

clause preserved his right to a jury trial.[131] The court acknowledged the "inherent tension between the Savings to Suitors Clause and the Limitation Act," observing the United States Court of Appeals for the Eleventh Circuit has identified a limited set of circumstances under which claimants must be allowed to proceed in a separate forum, with a jury if requested.[132] Because the instant claim did not fall within any of the identified exceptions, the court struck the claimant's demand for a jury.[133]

The outcome from the foregoing case can be contrasted against the decision in *Hansen v. Monteleone*.[134] This was also a limitation of liability claim, where the claimant (Monteleone), "is the sole individual with an asserted claim against plaintiff's vessel. And his motion includes several stipulations that comport with *Beiswenger* and ensure plaintiff will not be exposed to competing judgments."[135]

Thus, there was no reason to reject claimant's choice of forum. The court lifted the automatic stay and allowed the personal injury action filed by Monteleone to proceed in state court.[136]

V. SALVAGE

The 2024 admiralty opinions include a salvage claim from the United States District Court for the Middle District of Florida.[137] A pleasure cruise turned into a nightmare for the owners of the sailing vessel *Terry Leah*. On April 8, 2022, the married couple (owners of the vessel), along with a passenger who was also a licensed captain, took the vessel out for a day trip.[138] The weather was good, with choppy waves and moderate wind. During the course of the voyage, the vessel ran over a sandbar. The vessel was not traveling very fast, and it did not ground or come to a stop when it touched the sandbar. The tips of the starboard propeller were damaged, rendering the starboard engine inoperable. The vessel

131. *Id*. (citing 28 U.S.C § 1333). The clause falls within the general grant of admiralty jurisdiction to the federal courts, but "sav[es] to suitors in all cases all other remedies to which they are otherwise entitled." 28 U.S.C § 1333(1).

132. *In the matter of the Complaint of Payne*, 2024 WL 982524, at *1. (citing Beiswenger Enters. Corp. v. Carletta, 86 F.3d 1032, 1036–37 (11th Cir. 1996)).

133. *Id.* at *2.

134. 2024 WL 2112373 (N.D. Fla. Apr. 16, 2024).

135. *Id*. at *2 (citing *Beiswenger Enters. Corp.*, 86 F.3d 1032).

136. *Id*. The federal court directed the parties to file quarterly status reports. *Id*.

137. Marine Towing & Salvage of S.W. FL., Inc. v. One 66' Sabre Dirigo, 2024 WL 5111685 (M.D. Fla. Dec. 13, 2024).

138. *Id.* at *1.

could be safely operated using only the port engine, but the owner made the decision to drop anchor and call for a tow.[139]

The plaintiff operated the TowBoat US franchise, and received a call from the vessel.[140] During the call, the dispatcher never mentioned that TowBoat US may consider the undertaking as a salvage event.[141] The opinion describes in detail the conditions aboard the vessel, the demeanor of passengers thereon, and the sea conditions. It is very clear that nobody on the sailboat was frantic and the vessel was not in any danger of damage or beaching.[142] When the TowBoat US operator (Captain Stephen Lilly) arrived, he never mentioned the term salvage to the occupants of the stranded vessel. During the process of securing the vessel and maneuvering it back to the harbor, the sailboat lost its anchor.[143] The court made clear, however, this was largely due to the fault of the unskilled TowBoat US operator, Captain Stephen Lilly.[144]

Once safely at the dock, the owner/operator left.[145] Captain Lilly made no effort to discuss payment with them. However, he obtained a signature from the passenger on an iPad, without giving the gentleman the opportunity to read what he signed.[146] The first page of the document indicated it was a "Marine Salvage Contract."[147] A demand from TowBoat US for $500,000.00 for the services rendered was received within days of the service provided.[148] To avoid arrest of the vessel, the owner had to deposit $375,000.00 security.[149] The matter proceeded to trial, with the plaintiff seeking a salvage award under the general maritime law. The issue was whether or not the actions sufficed to establish a claim for "pure salvage."[150]

To establish a claim for pure salvage, the following elements must be demonstrated by a preponderance of evidence: "(1) marine peril, (2) voluntary service not required by existing duty, and (3) success in whole or in part."[151] The court determined, following a three-day bench trial,

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139. *Id.* at *1–2.
140. *Id.* at *2.
141. *Id.*
142. *Id.* at *2–3.
143. *Id.* at *3.
144. *Id.*
145. *Id.* at *4.
146. *Id.*
147. *Id.*
148. *Id.* at *6.
149. *Id.*
150. *Id.* at *4.
151. *Id.*

that the evidence failed to support a claim for marine peril and denied the salvage claim.[152]

The focus was on the existence of a marine peril, which can exist "when a boat is hard aground, taking on water, or at the mercy of the sea because of lack of power."[153] Further, to constitute a peril, the danger need not be imminent, but should be reasonably apprehended.[154] The court chided the plaintiff for exaggerating the conditions in order to establish a marine peril, and completely discredited the testimony of Captain Lilly, which was contradicted by the other witnesses and objective evidence (e.g., GPS data, weather information, photos).[155]

Not only did the plaintiff lose on its salvage claim, the court found in favor of the defendant on its counterclaim for attorney's fees.[156] Generally, the prevailing party in an admiralty case is not entitled to recover fees.[157] Fees may be awarded, however, if the non-prevailing party "acted in bad faith, vexatiously, wantonly or for oppressive reasons."[158] The party arguing bad faith must meet a high burden in order to recover attorney's fees.[159] Here, the court recounted the numerous instances of overreaching and bad faith perpetuated by the plaintiff, concluding that the defendants "established that Plaintiff engaged in bad-faith litigation, entitling them to an award of attorney's fees and costs . . . ."[160]

VI. PERSONAL JURISDICTION

A foreign vessel owner moved to dismiss a longshoreman's claim based on lack of personal jurisdiction in the United States District Court for the Southern District of Georgia.[161] The *M/V Hammonia Husum* (the Vessel), was owned and managed by defendants HSL Husum Shipping Ltd. and Hammonia Reederei GMBH & Co. KG. Defendants are organized and incorporated in the Isle of Man, with principle places of

152. *Id*. At best, the facts demonstrated this was a tow, not a salvage event.

153. *Id*. (citing Fine v. Rockwood, 895 F.Supp. 306, 309 (S.D. Fla. 1995)).

154. *Id.*

155. *Id*. at *8–10.

156. *Id.* at *10.

157. *Id.* at *6 (citing Misener Marine Constr., Inc. v. Norfolk Dredging Co., 594 F.3d 832, 838 (11th Cir. 2010)).

158. Esoteric, LLC v. One (1) 2000 Eighty-Foot Azimut Motor Yacht, 478 F. App'x 639, 643 (11th Cir. 2012) (internal citations omitted) (quoted in *Marine Towing & Salvage of S.W. FL., Inc.*, 2024 WL 5111685, at *6).

159. *Marine Towing & Salvage of S.W. FL., Inc.,* 2024 WL 5111685, at *6.

160. *Id.* at *10.

161. Valmont v. HSL Husum Shipping Ltd., 710 F.Supp.3d 1330, 1333 (S.D. Ga. 2024).

business in Germany. At all times relevant hereto, the Vessel was under long-term time charter to Maersk Line A/S.[162] The time charter was clear that the contract was not a demise, and that the owners (defendants herein) remained responsible for navigation at all times. Owners were also required to indemnify charterers for any claims of personal injury, however caused, unless caused by the charterer's negligence.[163]

The plaintiff strained his back while attempting to lift a metal hatch cover on the vessel that had become rusted and stuck.[164] Suit was originally filed in state court but removed to federal court. Following discovery, defendants moved for summary judgment, arguing the court lacked personal jurisdiction over the foreign owner and management companies.[165]

The federal court undertook the familiar two-step inquiry to determine whether personal jurisdiction exists: (1) evaluation of the state's long-arm statute; and (2) whether or not the exercise of jurisdiction would violate the Fourteenth Amendment's[166] due process clause.[167]

Georgia's long-arm statute[168] contains several provisions which can act as "hooks" to facilitate the exercise of jurisdiction over a foreign entity.[169] This includes whether or not the defendant conducts business in the state or commits a tortious act within the state of Georgia.[170] The plaintiff's focus was the tortious act committed within the state of Georgia; i.e., the injury occurred when the plaintiff tried to lift the rusty hatch cover.[171]

Claims asserted against a vessel owner by a longshoreman are governed by provisions of the Longshore and Harbor Worker's Compensation Act,[172] specifically Section 905(b).[173] Through well-established jurisprudence, the vessel owner owes certain limited duties to longshoremen and other workers aboard its vessel.[174] These are generally referred to as "*Scindia*" duties, and include: (1) turnover duty,

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162. *Id*.
163. *Id*. at 1333–34.
164. *Id*. at 1333.
165. *Id*. at 1334.
166. U.S. CONST. amend. XIV.
167. *Valmont,* 710 F.Supp.3d at 1335.
168. O.C.G.A § 9-10-91(1)–(3) (2011).
169. *Valmont,* 710 F.Supp.3d at 1336 (quoting O.C.G.A § 9-10-91(1)–(3)).
170. *Id*. (quoting O.C.G.A § 9-10-91(3)).
171. *Id*. (citing O.C.G.A § 9-10-91(2)).
172. 33 U.S.C. § 905 (1984).
173. *Id*.
174. *See* Scindia Steam & Navigation Co., Ltd. v. De Los Santos, 451 U.S. 156, 164–72 (1981).

(2) active control of duty, and (3) a duty to intervene.[175] Here, the plaintiff focused primarily on the turnover duty and the corollary duty to warn.[176] Defendants argued that any negligence vis-à-vis maintaining the hatch cover occurred long before the Vessel arrived in Georgia.[177] This overlooks that fact that the turnover duty, along with the duty to warn, attaches at the commencement of the stevedoring operations, not before.[178] Thus, the conduct that lead to the poor maintenance of the hatch was largely irrelevant to the inquiry, as a turnover duty is only breached—and the tort necessarily committed—when the vessel is turned over to the stevedore.[179] Because this tort occurred in Georgia, the prerequisites of the Georgia long-arm statute were satisfied.[180]

Turning to the Due Process clause of the Fourteenth Amendment, the court reiterated the familiar standard of purposeful availment and sufficient minimum contacts with the forum state.[181] The Vessel routinely called at the Port of Savannah, and had done so for a number of years.[182] Defendants argued they were essentially "along for the ride with the Charterer," but the court rejected this argument by pointing out that navigation and operational control is reserved to defendants under the time charterer.[183] "Simply put, Defendants 'purposely availed [themselves] of [the forum] when [their] employees voluntarily entered the jurisdiction aboard the vessel. Although [the defendants] had no control over the vessel's course, the ship management agreement contemplated that the ship would travel to locations throughout the world.'"[184]

Defendants' motion for summary judgment, based on lack of personal jurisdiction, was denied.[185]

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175. *Valmont*, 17 F.Supp.3d at 1336 (*see Scindia Steam & Navigation Co.*, 451 U.S. at 167).

176. *Id.* at 1336–37.

177. *Id.* at 1337.

178. *Id.*

179. *Id.*

180. *Id.* at 1337–38.

181. *Id.* at 1338–39.

182. *Id.* at 1339.

183. *Id.* at 1339–40.

184. *Id.* at 1340 (quoting Carmona v. Leo Ship Mgmt., Inc., 924 F.3d 190, 196 (5th Cir. 2019)).

185. *Id.* at 1341.